

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE NATIONAL PRESCRIPTION OPIATE
LITIGATION

This document relates to:

*The Muscogee (Creek) Nation v. Purdue Pharma
L.P., et al.,*
Case No. 1:18-op-45459-DAP

MDL No. 2804

Case No. 17-md-2804

Hon. Dan Aaron Polster

NOTICE OF SUPPLEMENTAL AUTHORITY

KVK-Tech, Inc. (“KVK”), Amneal Pharmaceuticals, Inc. (“API”),¹ Watson Laboratories, Inc. (“Watson”), Actavis Pharma, Inc. (“Actavis Pharma”), Actavis LLC (“Actavis”), Teva Pharmaceuticals, USA, Inc. (“Teva”), and Allergan Finance, LLC (“Allergan”) (collectively the “Generic Manufacturers”) respectfully submits this Notice of Supplemental Authority to bring the Court’s attention to the recent decision in *Allen v. Vintage Pharms. LLC*, No. 5:18-cv-00329-TES (M.D. Ga. Feb. 11, 2019), ECF No. 30 (attached as Exhibit A). That decision further supports the Generic Manufacturers’ pending Motion to Dismiss in this case. (ECF No. 929).

In *Allen*, the Honorable Judge Tilman E. Self, III dismissed similar claims against generic manufacturers in a wrongful death action due in part to an opioid prescription (in combination with another medicine). Applying *PLIVA, Inc. v. Mensing*, 564 U.S. 604 (2011), Judge Self held that “no matter how artfully pled, Plaintiff fails to state a claim for failure to warn because such a claim

¹ Amneal Pharmaceuticals, Inc. (“API”), disputes that it has been properly served or that it is subject to personal jurisdiction in this Court. By joining in this filing, API does not waive, and expressly reserves and preserves, all defenses, including those related to personal jurisdiction and service of process.

is preempted by federal law.” Ex. A, at 10. He dismissed the remaining false marketing claims because plaintiff failed “to even plead the essential elements of either a fraud or negligent misrepresentation claim” against the generic manufacturers. *Id.* at 10-11. The Court should reach the same result here.

Dated: March 1, 2019

Respectfully submitted,

By: /s/ Steven A. Reed

Steven A. Reed

Eric W. Sitarchuk

Rebecca J. Hillyer

MORGAN, LEWIS & BOCKIUS LLP

1701 Market St.

Philadelphia, PA 19103-2921

Tel: (215) 963-5603

steven.reed@morganlewis.com

eric.sitarchuk@morganlewis.com

rebecca.hillyer@morganlewis.com

Brian M. Ercole

MORGAN, LEWIS & BOCKIUS LLP

200 S. Biscayne Blvd., Suite 5300

Miami, FL 33131-2339

Tel: (305) 415-3000

brian.ercole@morganlewis.com

*Counsel for Teva Pharmaceuticals, USA, Inc.,
Watson Laboratories, Inc., Actavis LLC, and Actavis
Pharma, Inc. f/k/a Watson Pharma, Inc.*

By: /s/ Paul J. Cosgrove

Paul J. Cosgrove (0073160)

Jeffrey F. Peck (0007943)

ULMER & BERNE LLP

600 Vine Street, Suite 2800

Cincinnati, OH 45202

Phone: (513) 698-5000

Fax: (513) 698-5001

Email: pcosgrove@ulmer.com

Email: jpeck@ulmer.com

*Counsel for Defendant Amneal Pharmaceuticals,
Inc.*

By: /s/ Thomas E. Rice

Thomas E. Rice *

BAKER STERCHI COWDEN & RICE LLC

2400 Pershing Road, Suite 500

Kansas City, MO 64108

Telephone: 816.471.2121

Email: rice@bscr-law.com

*Counsel for Defendant
KVK-Tech, Inc.*

By: /s/ Donna Welch

Donna Welch

KIRKLAND & ELLIS LLP

300 North LaSalle

Chicago, IL 60654

Phone: (312) 862-2425

Email: donna.welch@kirkland.com

Counsel for Defendant Allergan Finance, LLC

CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2019, a copy of the foregoing **Notice of Supplemental Authority** was filed electronically in MDL Master Docket No. 17-md-2804 and in No. 1:18-op-45459-DAP. Notice of this filing was sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

By: /s/ Steven A. Reed
MORGAN, LEWIS & BOCKIUS LLP
1701 Market St.
Philadelphia, PA 19103-2921
Tel: (215) 963-5603